



## MEMO ENDORSED

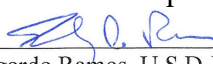
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December 23, 2021

via ECF

Hon. Edgardo Ramos  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Defendants' requests are GRANTED. Defendants are directed to take Ms. Pinkowitz's testimony pursuant to the proposed protocol. Defendants are further directed to submit a revised protocol reflecting the question allocation of 20 questions from Defendants and 10 questions from Plaintiffs in the event that Plaintiffs accept the proposal. It is SO ORDERED.

  
Edgardo Ramos, U.S.D.J.  
Dated: 12/27/2021  
New York, New York

**Re: *Xia, et al. v. 65 West 87th Street Housing Development Fund Corporation et al.*,  
Case No. 1:20-cv-03576 (ER)**

Dear Judge Ramos:

We represent the Defendants in the above-referenced action. The Court's December 1st and 17th orders directed the undersigned and Samantha Pinkowitz's counsel to submit a proposed protocol for taking Ms. Pinkowitz' testimony by written deposition. We submit this letter reflecting the agreed upon protocol and request that the Court enter an order directing that Ms. Pinkowitz' deposition will be taken pursuant to this protocol.

Consistent with FRCP 31(a)(3), Defendants will serve Ms. Pinkowitz (and Plaintiffs) with direct questions. Such service will occur no later than 14 days from the date of the Court's entry of an order approving the protocol. In accord with FRCP 31(a)(5), Plaintiffs and Ms. Pinkowitz' counsel will each serve cross-questions, if any, 14 days after service of Defendants' direct questions. Defendants will serve redirect questions seven days after service of the cross questions. Plaintiffs and Ms. Pinkowitz' counsel will each serve recross-questions, if any, seven days after service of Defendants' redirect questions. Objections to the form of a question may be made by the process set forth in FRCP 32(b)(C). Service of questions will be made upon counsel to the parties and Ms. Pinkowitz, as applicable and not upon the parties or Ms. Pinkowitz directly.

At Ms. Pinkowitz' request, the total number of questions from the parties will be limited to 30, with 25 allocated to Defendants and five allocated to Plaintiffs. Ms. Pinkowitz' counsel reserves the right to pose five questions, in addition to the 30 posed by the parties. The parties and Ms. Pinkowitz' counsel may divide their allotted questions as they wish across direct, cross, re-direct or re-cross, as applicable.

Plaintiffs have advised that they may challenge the admissibility of the testimony at trial on the basis that asking five questions may not allow Plaintiffs an opportunity to develop the testimony such that the hearsay exception under FRE 804(b)(1) is satisfied. Defendants have offered to change the allocation to 20 questions from Defendants and ten from Plaintiffs provided

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that Plaintiffs stipulate that FRE 804(b)(1)(b) is satisfied. In the event that Plaintiffs accept this proposal, Defendants request that the Court permit the submission of a revised protocol reflecting that question allocation.

Consistent with FRCP 31(b), Defendants will promptly deliver all questions served to an officer designated under FRCP 28, who shall promptly proceed to take Ms. Pinkowitz' testimony, via remote means, by reading the questions prepared by counsel to Ms. Pinkowitz and transcribing her responses. The officer shall prepare and certify the deposition transcript and send it to Defendants. Ms. Pinkowitz agrees to be available for the deposition within 14 days of the officer's receipt of the questions.

We thank the Court for its consideration of this matter.

Respectfully submitted,

Jacqueline L. Aiello

Cc: Alanna Kaufman, Esq. (*via* ECF)  
Bruce Cholst, Esq. (*via* email on consent)